

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS

ROBERT MICHALSKI, Individually and
on Behalf of All Others Similarly Situated,

Plaintiff,

v.

WEBER INC., CHRISTOPHER
SCHERZINGER, WILLIAM HORTON,
MARLA KILPATRICK, KELLY D.
RAINKO, ELLIOTT HILL, MARTIN
MCCOURT, MELINDA R. RICH, JAMES C.
STEPHEN, SUSAN T. CONGALTON,
MAGESVARAN SURANJAN, GOLDMAN
SACHS & CO. LLC, BOFA SECURITIES,
INC., J.P. MORGAN SECURITIES LLC,
BMO CAPITAL MARKETS CORP.,
CITIGROUP GLOBAL MARKETS INC.,
UBS SECURITIES LLC, WELLS FARGO
SECURITIES, LLC, KEYBANC CAPITAL
MARKETS INC., ACADEMY SECURITIES,
INC., CABRERA CAPITAL MARKETS
LLC, SIEBERT WILLIAMS SHANK & CO.,
LLC, TELSEY ADVISORY GROUP LLC,
and BDT CAPITAL PARTNERS, LLC,

Defendants.

Case No. 1:22-CV-03966
Honorable Elaine E. Bucklo

DEFENDANTS' OPPOSED MOTION TO DISMISS THE AMENDED COMPLAINT

Defendants Weber Inc. ("Weber"), Chris Scherzinger, William Horton, Marla Kilpatrick, Kelly D. Rainko, Elliott Hill, Martin McCourt, Melinda R. Rich, James C. Stephen, Susan T. Congalton, Magesvaran Suranjan, Goldman Sachs & Co. LLC, BofA Securities, Inc., J.P. Morgan Securities LLC, BMO Capital Markets Corp., Citigroup Global Markets Inc., UBS Securities LLC, Wells Fargo Securities, LLC, KeyBanc Capital Markets Inc., Academy Securities, Inc., Cabrera Capital Markets LLC, Siebert Williams Shank & Co., LLC, Telsey

Advisory Group LLC and BDT Capital Partners, LLC (collectively with Weber, “Defendants”) respectfully move this Court pursuant to Federal Rule of Civil Procedure 12(b)(6) to dismiss Lead Plaintiff Mateusz Grudziaz’s amended complaint (the “Amended Complaint”) ([Dkt. No. 69](#)) with prejudice. In support of this Motion to Dismiss, Defendants state:

1. The Amended Complaint alleges violations of Sections 11 and 15 of the Securities Act of 1933 against Defendants, based on alleged misrepresentations and omissions contained in the registration statement and prospectus for Weber’s August 2021 IPO (together, the “Registration Statement”).

2. As set forth in Defendants’ Memorandum of Law in Support of their Motion to Dismiss, the Amended Complaint fails to state a claim under Section 11 because it does not plausibly allege that the Registration Statement contained any misrepresentation of material fact or omitted material information required to be disclosed under the securities laws or necessary to make statements in the Registration Statement not misleading. Moreover, the alleged misstatements in the Registration Statement are also nonactionable statements of opinion, nonactionable statements of corporate optimism, and/or are protected by the bespeaks caution doctrine.

3. The Amended Complaint fails to state a claim under Section 15 because Plaintiff has not alleged an underlying primary violation of Section 11.

4. Defendants submit the accompanying Memorandum of Law, as well as the Declaration of Brian M. Burnovski and exhibits attached thereto, in further support of this Motion.

WHEREFORE, Defendants request that this Court dismiss the Amended Complaint with prejudice.

Dated: May 5, 2023

Respectfully submitted,

/s/ Amy C. Andrews

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